

## Message Text

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FM AMEMBASSY BERN  
TO SECSTATE WASHDC 1978  
AMCONSUL ZURICH

C O N F I D E N T I A L SECTION 1 OF 2 BERN 199

E.O. 11652: GDS  
TAGS: OREP, (BLUM, JACK)  
SUBJECT: STAFFDEL BLUM DISCUSSIONS IN BERN

REF: STATE 302057, 00316

1. BEGIN SUMMARY. STAFFDEL BLUM HAD SEPARATE DISCUSSIONS IN BERN WITH BERN PUBLIC PROSECUTOR STEFAN TRECHSEL AND WITH KURT MARKEES, ADVISOR, MINISTRY OF JUSTICE AND POLICE. DISCUSSION WITH TRECHSEL COVERED THE F-5E SALE ONLY BRIEFLY; SWISS COMMERCIAL AND BANKING SECRECY WAS THE MAJOR TOPIC. THE INTERVIEW WITH MARKEES CENTERED ON THE NEED FOR INTERNATIONAL COOPERATION IN THE CONTROL OF MULTINATIONAL COMPANIES. MARKEES SAID THAT IN SWITZERLAND NEITHER THE BANKS NOR INDUSTRY RECOGNIZED THE NEED FOR SUCH CONTROL AND THAT SWITZERLAND COULD NOT, ACCORDINGLY, TAKE ANY SIGNIFICANT STEPS TO IMPROVE COOPERATION IN THIS REGARD. END SUMMARY

2. TRECHSEL MADE CLEAR AT THE OUTSET THAT HE COULD NOT DISCUSS IN ANY DETAIL THE RESULTS OF HIS INVESTIGATION, WHICH HE CONDUCTED IN A PRIVATE CAPACITY AT THE REQUEST OF THE GOS, INTO THE ACTIVITIES OF NORTHROP, ITS SUBSIDIARY, THE ECONOMIC DEVELOPMENT CORPORATION, AND THE F5-E SALE. HE SAID THAT SINCE HE WAS ACTING AS A PRIVATE INVESTIGATOR, NO ONE WAS UNDER ANY COMPULSION TO TALK TO HIM, BUT THAT EVERYONE, WITH ONE OR TWO EXCEPTIONS, WAS NONETHELESS QUITE OPEN ABOUT WHAT HAD OR HAD NOT HAPPENED. HE SAID HIS CONCLUSION WAS THAT FOR THE FEES NORTHROP PAID EDC IN CONNECTION WITH THE  
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F-5E SALE ALL NORTHROP GOT WAS A MINIMUM LOBBYING EFFORT,

WHICH EDC REPRESENTATIVES HAD GREATLY EXAGGERATED IN ORDER TO JUSTIFY CLAIMS FOR COMMISSIONS ON THE SALE. BLUM SAID HE DOUBTED THAT THE CHURCH COMMITTEE WOULD REOPEN THE NORTHROP FILE.

3. IN THE DISCUSSION ON THE LAW AND SENSITIVITIES OF THE SWISS ABOUT COMMERCIAL AND BANKING SECRECY, TRECHSEL MADE THE FOLLOWING POINTS:

A. THE REAL BASIS FOR SWISS SENSITIVITY IS THE BELIEF THAT ALL SWITZERLAND HAS TO SELL IS KNOW-HOW, AND CHANGING A LAW WHICH PROTECTS THAT KNOW-HOW WOULD BE VIRTUALLY IMPOSSIBLE;

B. THE GOS CAN, IF IT WISHES, INTERVENE IN CASES WITH FOREIGN POLICY IMPLICATIONS IN EITHER DIRECTION; TO STOP THE PROSECUTION OF SOMEONE WHO HAS VIOLATED THE LAW, OR TO FORCE THE COOPERATION OF AN INSTITUTION WITH A FOREIGN COUNTRY WHOSE LAWS HAVE BEEN VIOLATED, BUT ONLY, IN THE LATTER CASE, WHERE TAX EVASION IS NOT THE ISSUE AND ONLY ON VERY RARE OCCASIONS WHERE THERE IS NOT TREATY OBLIGATION TO DO SO.

C. THAT EXISTING RULES WERE CLEARLY SEEN TO BE IN SWITZERLAND'S BEST INTEREST, EVEN THOUGH THEY SOMETIMES RESULTED IN BAD PUBLICITY FOR SWITZERLAND ABROAD.

4. BLUM POINTED OUT THAT ONE MAJOR PROBLEM WITH THE KIND OF PROTECTION SWITZERLAND'S LAWS AFFORDED IS THAT THEY COULD LEAD TO INTERNAL CORRUPTION. TRECHSEL COUNTERED THAT IN ONE CASE A MAN WHO OFFERED TO USE HIS INFLUENCE TO HELP PROMOTE A SWISS CUSTOMS OFFICER IN RETURN FOR A SMALL FAVOR HAD BEEN PROSECUTED, AND THAT THE SUCCESSFUL BRIBERY OF SWISS OFFICIALS WAS SO UNLIKELY AS TO BE PRACTICALLY OUT OF THE QUESTION. BLUM ASKED WHY, EVEN ASSUMING SWISS COMMERCIAL AND BANKING SECRECY CAUSED NO PROBLEMS RELATED TO INTERNAL CORRUPTION, THE RULES SHOULD BE EXTENDED TO PROTECT NON-SWISS. TRECHSEL REPLIED THAT SWISS RESIDENTS OF WHATEVER NATIONALITY ARE ENTITLED TO THE PROTECTION OF SWISS LAWS, AND THAT AN ATTEMPT TO DEPRIVE THEM OF THAT PROTECTION BY THE EXTRATERRITORIAL APPLICATION OF FOREIGN LEGISLATION WAS AN INFRINGEMENT OF SOVEREIGNTY WHICH THE SWISS GOVERNMENT COULD NOT ALLOW. IN OPERATION  
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THAT PROTECTION WOULD EXTEND, IN THE LOCKHEED CASE FOR EXAMPLE, TO THOSE DOING BUSINESS WITH LOCKHEED. IF LOCKHEED'S SWISS AFFILIATE HAD GIVEN ITS SWISS RECORDS TO THE CHURCH COMMITTEE, IT COULD HAVE BEEN SUED AND/OR PROSECUTED IN SWISS COURTS BY THOSE WHOSE INTERESTS WERE ADVERSELY AFFECTED.

5. IN RESPONSE TO BLUM'S QUESTION, TRECHSEL SAID THAT

IF THE UNITED STATES PASSED LEGISLATION TO FORCE AMERICAN COMPANIES TO STOP USING SWISS AND OTHER COUNTRIES' LAWS TO PROTECT THEM FROM PROSECUTION OR INVESTIGATION IN THE UNITED STATES, SUCH LEGISLATION WOULD BE MORE ACCEPTABLE TO SWITZERLAND IF IT WAS GENERAL AS TO APPLICATION AND DID NOT NAME SWITZERLAND, AND IF IT COVERED, FOR EXAMPLE, CERTAIN SECTORS, SUCH AS ARMS SALES, ON WHICH THERE ARE STRICT GOS CONTROLS.

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C O N F I D E N T I A L SECTION 2 OF 2 BERN 199

6. AT THE MEETING WITH FEDERAL DEPT OF JUSTICE AND POLICE OFFICIAL DR. CURT MARKEES AND CLAUDIO CARATSCH, POL DEPT US DESK OFFICER, BLUM STATED THAT THE SUBCOMMITTEE HE REPRESENTED IS SEARCHING FOR A SOLUTION TO THE PROBLEM OF MNCS OPERATING BEYOND ANY EFFECTIVE NATIONAL REGULATIONS AND PARTICULARLY WITH REGARD TO BRIBERY OF FOREIGN OFFICIALS. HE SAID THE SUBCOMMITTEE HOPED THAT SWITZERLAND COULD COOPERATE IN FINDING A SOLUTION. BLUM STATED THAT INVESTIGATIONS HAVE REVEALED THAT IN EVERY BRIBERY CASE OF FOREIGN (NON-US, NON-SWISS) OFFICIALS BY MNCS, SWISS FINANCIAL INSTITUTIONS WERE USED. YET, HE SAID, INVESTIGATION WAS FRUSTRATED IN EACH CASE BY CLAIMS OF SWISS SOVEREIGNTY AND PROTECTION OF PRIVACY. HE SAID THAT IT WAS HARD TO UNDERSTAND WHY THE GOS IS SEEKING TO PROTECT PERSONS AND INTERESTS WITH LITTLE OR NO CONNECTION WITH SWITZERLAND. MARKEES SAID THAT THE PRINCIPAL OF EQUAL PROTECTION OF THE LAW REQUIRED THE GOS TO TREAT EVERY PERSON IN SWITZERLAND ON AN EQUAL BASIS. BLUM THEN ASKED WHY CORPORATIONS' RIGHTS TO PRIVACY WERE PROTECTED. MARKEES SAID THAT INFORMATION CONCERNING THIRD PARTIES MIGHT

BE HELD BY ANY CORPORATION AND THAT TO COMPEL CORPORATIONS TO PRODUCE RECORDS, ETC. MIGHT INJURE THE PRIVACY RIGHTS OF THOSE INDIVIDUALS.

7. BLUM CITED THE EXAMPLE OF LOCKHEED, WHICH OPENED OFFICES IN GENEVA ALTHOUGH LOCKHEED DID NO BUSINESS IN SWITZERLAND. HE SAID IT APPEARED THE OFFICE EXISTED ONLY TO FACILITATE THE PAYMENT OF BRIBES OUTSIDE SWITZERLAND. BLUM SAID THAT WHEN THE SUBCOMMITTEE ATTEMPTED TO OBTAIN RECORDS FROM GENEVA  
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OFFICE LOCKHEED INTERPOSED THE ISSUE OF SWISS SOVEREIGNTY, RELYING ON AN OPINION FROM GENEVA COUNSEL. BLUM ASKED WHY THE GOS WISHED TO PROTECT SUCH ACTIVITIES. MARKEES DID NOT REPLY.

8. BLUM THEN ADDRESSED THE SOLUTION OF THE PROBLEM. HE SAID LEGISLATION WAS UNDER DISCUSSION WHICH WOULD PROHIBIT A US-BASED MNC WHICH CONDUCTED BUSINESS OUTSIDE THAT COUNTRY FROM HAVING A BRANCH IN A "SECRECY COUNTRY" (LIKE SWITZERLAND). HE SAID ANOTHER POSSIBILITY WOULD BE A STATUTE WHICH WOULD REQUIRE THAT THE RECORDS OF THE BRANCH IN A "SECRECY COUNTRY" BE PERIODICALLY TRANSMITTED TO THE U.S. WHERE THEY WOULD BE ACCESSIBLE. MARKEES SAID HE COULD NOT COMMENT ON SWISS REACTION TO EITHER PROPOSAL. BLUM SAID THAT IF LEGISLATION WERE ENACTED AND OPPOSED BY SWITZERLAND THEN HE BELIEVED IT WOULD BE FRUITLESS SINCE SWISS COOPERATION WOULD BE REQUIRED. IT WAS ALSO POINTED OUT THAT IF LEGISLATION WERE ENACTD IN U.S. MAKING IT A CRIME PUNISHABLE UNDER U.S. LAW FOR AN EMPLOYEE OF A US-BASED MCN TO BRIBE A FOREIGN OFFICIAL THEN PROVISIONS OF THE PENDING JUDICIAL ASSISTANCE TREATY COULD BE INVOKED TO OBTAIN INFO IN SWITZERLAND. BLUM SAID HE WOULD PROPOSE TO THE SUBCOMMITTEE THAT LEGISLATION WOULD DEFINE SUCH A BRIBE AS A CRIME AND NOT A CIVIL OFFENSE SO THAT JAT COULD BE UTILIZED.

9. MARKEES SAID THAT THE POSSIBILITY OF SWITZERLAND COOPERATING SPECIFICALLY ON MEASURES TO CONTROL MNCS WAS SMALL. HE SAID IN SWITZERLAND THERE WAS NO GENERAL OPINION THAT SUCH CONTROL WAS NECESSARY AND THE SWISS BANKS AND INDUSTRY WERE, IN ANY EVENT, STRONGLY OPPOSED TO ANY CONTROLS. HE ADDED THAT AS MORE INFO BECAME GENERALLY AVAILABLE IN SWITZERLAND ON THIS SUBJECT, AND IF PUBLIC OPINION WERE TO FAVOR INCREASED CONTROL OF MNCS, THEN THE GOS POSITION MIGHT CHANGE DESPITE THE OPPOSITION OF BANKS AND INDUSTRY.  
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